Robert L. Hyde, Esq. (SBN: 227183)
bob@westcoastlitigation.com
Joshua B. Swigart, Esq. (SBN: 225557)
josh@westcoastlitigation.com
Hyde & Swigart
411 Camino Del Rio South, Suite 301
San Diego, CA 92108-3551
Telephone: (619) 233-7770
Facsimile: (619) 297-1022

Attorneys for Plaintiff

FILED
APR 21 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Erica Welker **Plaintiff,** **v.** **California Accounts Service** **Defendant.**	**Case No:** '08 CV 0723 JLS CAB **Complaint For Damages** **JURY TRIAL DEMANDED**

INTRODUCTION

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA"), to eliminate abusive debt collection practices by debt collectors,

ORIGINAL

to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.[1]

2. The California legislature has determined that the banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts and that unfair or deceptive collection practices undermine the public confidence that is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers. The Legislature has further determined that there is a need to ensure that debt collectors exercise this responsibility with fairness, honesty and due regard for the debtor's rights and that debt collectors must be prohibited from engaging in unfair or deceptive acts or practices.[2]

3. ERICA WELKER, ("Plaintiff"), by Plaintiff's attorneys, brings this action to challenge the actions of CALIFORNIA ACCOUNTS SERVICE, ("Defendant"), with regard to attempts by Defendant, a debt collector, to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.

4. All allegations in this Complaint are made on information and belief, except those allegations that pertain to the named Plaintiff, or to their attorneys, which are alleged on personal knowledge.

[1] 15 U.S.C. §§ 1692(a)-(e)

[2] Cal. Civ. Code §§ 1788.1 (a)-(b)

JURISDICTION AND VENUE

5. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d), and 28 U.S.C. § 1367 for supplemental state law claims.

6. This action arises out of Defendant's violations of the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 (RFDCPA), the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq..

7. Because Defendant does business within the State of California, personal jurisdiction is established.

8. Venue is proper pursuant to 28 U.S.C. § 1391.

PARTIES

9. Plaintiff is a natural person who resides in the City of Carlsbad, County of San Diego, State of California and is obligated or allegedly obligated to pay a debt, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

10. Plaintiff is a natural person from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h).

11. Plaintiff is informed and believes, and thereon alleges, that Defendant is a company operating from the City of El Cajon, County of San Diego, State of California.

12. Plaintiff is informed and believes, and thereon alleges, that Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is therefore a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).

HYDE & SWIGART
San Diego, California

13. Plaintiff is informed and believes, and thereon alleges, that Defendant, in the ordinary course of business, regularly, on behalf of himself or herself or others, engages in debt collection as that term is defined by California Civil Code § 1788.2(b), and is therefore a "debt collector" as that term is defined by California Civil Code § 1788.2(c).

14. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a "consumer debt" and "consumer credit" as those terms are defined by Cal. Civ. Code § 1788.2(f).

FACTUAL ALLEGATIONS

15. At all times relevant, Plaintiff was an individual residing within the State of California.

16. Plaintiff is informed and believes, and thereon alleges, that at all times relevant Defendant conducted business in the State of California.

17. Sometime before November 11, 2004, Plaintiff's physician advised Plaintiff that Plaintiff required surgery, and that Plaintiff's physician performs surgeries at Ambulatory Care Surgery Center ("ACSC"), formerly known as "Medpremises."

18. Plaintiff informed her physician that ACSC is an "out-of-network" health provider and that because such providers are not completely covered by Plaintiff's insurance, Plaintiff would rather have the surgery done at an "in-network" facility to keep Plaintiff's cost to a minimum. Plaintiff voiced her concern to Plaintiff's physician that Plaintiff's insurance company pays at a much lower rate for any service provided by an out-of-network facility, and that she did not want to be responsible for the remainder. Plaintiff's physician, and later, ACSC, assured Plaintiff that she would not be

HYDE & SWIGART
San Diego, California

responsible for any deficiency and that ACSC would accept only what insurance paid.

19. Plaintiff was not given any other choice where her surgery could take place, however, Plaintiff was assured by Plaintiff's physician and, after Plaintiff followed up with ACSC, ACSC itself, that Plaintiff would not be responsible for any out of pocket cost, and that any insurance payment made to ACSC by Plaintiff's insurance company would be considered as full reimbursement for ACSC's services. Plaintiff would owe nothing.

20. Relying on these representations, Plaintiff agreed to the surgery to be performed at ACSC.

21. On or about November 11, 2004, Plaintiff had surgery at Ambulatory Care Surgery Center.

22. On or about January 13, 2005, Plaintiff had an additional surgery at Ambulatory Care Surgery Center.

23. Although Plaintiff was previously assured by Plaintiff's physician and ACSC that she owed nothing for this surgery, sometime before October 16, 2007, ACSC made the determination that Plaintiff *did* owe something for this surgery.

24. Plaintiff is informed and believes, and thereon alleges, that subsequently, but before October 16, 2007, the alleged debt was assigned, placed, or otherwise transferred, to Defendant for collection.

25. This alleged debt was money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and were therefore "debt(s)" as that term is defined by California Civil Code §1788.2(d), and a "consumer debt" as that term is defined by California Civil Code §1788.2(f).

HYDE & SWIGART
San Diego, California

HYDE & SWIGART
San Diego, California

26. These alleged financial obligations were primarily for personal, family or household purposes and are therefore "debt(s)" as that term is defined by 15 U.S.C. §1692a(5).

27. On or about October 16, 2007, Defendant contacted Plaintiff by telephone and left a message on the answering machine at Plaintiff's home.

28. This telephone call to Plaintiff, by Defendant, was a "communication" as that term is defined by 15 U.S.C. § 1692a(2), a "debt collection" as that term is defined by Cal. Civ. Code 1788.2(b), and an "initial communication" consistent with 15 U.S.C. § 1692g(a) and Cal. Civ. Code § 1812.700(b).

29. This October 16, 2007 communication merely stated a telephone number that was subsequently determined to be that of Defendant's business, and a name, Deborah, and a demand that Plaintiff call that number.

30. Without exception, this October 16, 2007 communication did not provide Defendant's company name or that Defendant was a debt collector, thereby lacking meaningful disclosure of the caller's identity. As such, the communication violates 15 U.S.C. §§ 1692d(6), 1692e(11), and Cal. Civ. Code § 1788.11(b). Because this action violated 15 U.S.C. §§ 1692d(6) and 1692e(11), it also violates Cal. Civ. Code § 1788.17.

31. Defendant failed within five days after its initial communication with Plaintiff, to provide written notification containing a statement that unless Plaintiff, within thirty days after receipt of that notice, disputed the validity of the debt, or any portion thereof, Defendant would assume the debt was valid, or failed within five days after its initial communication with Plaintiff to provide a written notice containing a statement that if Plaintiff notified Defendant in writing, within the thirty-day period that the debt, or any portion thereof, was disputed, Defendant would obtain verification of the debt or a copy of a judgment against Plaintiff and a copy of such verification or

judgment would be mailed to Plaintiff by Defendant and that Defendant would provide Plaintiff with the name and address of the original creditor.

32. This omission by Defendant violated 15 U.S.C. § 1692g. Further, because of this omission, Defendant also violated Cal. Civ. Code § 1788.17.

33. On or about October 16, 2007, Defendant again contacted Plaintiff by telephone and left another message on the answering machine at Plaintiff's home.

34. Again, this October 16, 2007 communication merely stated a telephone number that was subsequently determined to be that of Defendant's business, and a name, Deborah, and a demand that Plaintiff call that number.

35. Without exception, this October 16, 2007 communication did not provide Defendant's company name or that Defendant was a debt collector, thereby lacking meaningful disclosure of the caller's identity. As such, the communication violates 15 U.S.C. §§ 1692d(6), 1692e(11), and Cal. Civ. Code § 1788.11(b). Because this action violated 15 U.S.C. §§ 1692d(6) and 1692e(11), it also violates Cal. Civ. Code § 1788.17.

36. Subsequently, on October 16, 2007, Plaintiff called the phone number Defendant had left on Plaintiff's home answering machine.

37. During this conversation, Defendant informed Plaintiff that Defendant was a collector for Ambulatory Care Surgery Center ("ACSC"), and that Plaintiff had an outstanding debt.

38. Plaintiff informed Defendant that Plaintiff had surgery over three (3) years ago and that this was the first time, after three (3) years, that Plaintiff had heard about the alleged debt.

39. Plaintiff informed Defendant that the agreement between Plaintiff, her physician, and ACSC was that there would be no additional cost to Plaintiff,

HYDE & SWIGART
San Diego, California

and that the insurance payments would be deemed as full payment for the operation.

40. Plaintiff advised Defendant that Plaintiff disputed the debt claimed owed by Plaintiff to Defendant.

41. During this conversation, Defendant stated that the insurance company's payment was not enough, and that Plaintiff should contact insurance company and appeal for more payment. Defendant told Plaintiff that "you have good credit score" and that unless the insurance company or Plaintiff made a payment within ten (10) days, Defendant would "ruin [Plaintiff's] credit."

42. The communication made by Defendant to Plaintiff was a false, deceptive, unfair, unconscionable, or misleading representation or means in connection with the collection of the alleged debt. As such, this action by Defendant violated 15 U.S.C. §§ 1692e, and 1692e(5), and because this action violated 15 U.S.C. §§ 1692e, and 1692e(5), it also violated Cal. Civ. Code § 1788.17.

43. On or about November 2, 2007, Defendant contacted Plaintiff by telephone at Plaintiff's home.

44. During this conversation, Defendant demanded that Plaintiff pay the alleged debt, and told Plaintiff "You owe this money." Plaintiff again disputed the alleged debt. Defendant threatened to sue Plaintiff, and further told Plaintiff that Plaintiff "could fight it in [court]." Defendant further claimed that if Defendant sued Plaintiff, Plaintiff would be responsible for Defendant's attorneys' fees and costs. In addition, Defendant stated that ACSC had already sued other patients with delinquent accounts.

45. This November 2, 2007 communication represents a false, deceptive, unfair, unconscionable, and misleading means used in connection with the collection of the alleged debt. As such, Defendant violated Cal. Civ. Code §§ 1788.13(i)

HYDE & SWIGART
San Diego, California

and 1788.13(j). Defendant further violated Cal. Civ. Code § 1788.17 because Defendant violated 15 U.S.C. §§ 1692e, 1692e(2)(B), 1692e(10), and 1692f.

46. This communication represented the threat to take an action that cannot legally be taken or that Defendant did not intend to take, and violated Cal. Civ. Code § 1788.17 because it violated 15 U.S.C. § 1692e(5).

47. On or about November 5, 2007, Defendant sent, and Plaintiff received, a dunning letter addressed to Plaintiff's home and in the name of Defendant.

48. This letter to Plaintiff, sent by Defendant, was a "communication" as that term is defined by 15 U.S.C. § 1692a(2), a "debt collection" as that term is defined by Cal. Civ. Code 1788.2(b).

49. In this communication Defendant stated that the debt allegedly owed by Plaintiff was being reviewed for filing a lawsuit. Further, Defendant demanded payment of the alleged debt within five (5) days or Defendant would make the final decision to file the lawsuit. Defendant ended the letter with "Consider your alternatives closely."

50. This statement represented the threat to take an action that cannot legally be taken or that Defendant did not intend to take, and violated Cal. Civ. Code § 1788.17 because it violated 15 U.S.C. § 1692e(5).

51. This statement also represents a false, deceptive, or misleading means used in connection with the collection of the alleged debt. As such, Defendant violated Cal. Civ. Code §§ 1788.13(i) and 1788.13(j). Defendant further violated Cal. Civ. Code § 1788.17 because Defendant violated 15 U.S.C. §§ 1692e, 1692e(2)(B), and 1692e(10).

52. On or about November 9, 2007, Defendant telephoned Plaintiff at her home. During this conversation, Defendant was very rude, harassing, condescending, and threatening. Defendant demanded that Plaintiff pay the alleged debt, or Defendant would ruin Plaintiff's credit worthiness. Further,

Defendant threatened to file a lawsuit against Plaintiff and implied that Defendant would take Plaintiff's house. In this communication Defendant used language the natural consequence of which was to harass, oppress, or abuse Plaintiff, in violation of 15 U.S.C. § 1692d and Cal. Civ. Code § 1788.17.

53. This November 9, 2007 communication represented the threat to take an action that cannot legally be taken or that Defendant did not intend to take, and violated Cal. Civ. Code § 1788.17 because it violated 15 U.S.C. § 1692e(5).

54. This November 9, 2007 communication also represents a false, deceptive, unfair, unconscionable, and misleading means used in connection with the collection of the alleged debt. As such, Defendant violated Cal. Civ. Code §§ 1788.13(i) and 1788.13(j). Defendant further violated Cal. Civ. Code § 1788.17 because Defendant violated 15 U.S.C. §§ 1692e, 1692e(2)(B), 1692e(10), and 1692f.

55. On or about November 9, 2007, Defendant sent, and Plaintiff received, another dunning letter addressed to Plaintiff's home and in the name of Defendant.

56. This letter to Plaintiff, sent by Defendant, was a "communication" as that term is defined by 15 U.S.C. § 1692a(2), a "debt collection" as that term is defined by Cal. Civ. Code 1788.2(b).

57. In this communication Defendant again stated that the debt allegedly owed by Plaintiff was being reviewed for filing a lawsuit, and services of an attorney may be obtained to file the suit, in which case Plaintiff would be responsible for the attorney fees, in addition to the related costs. Further, Defendant demanded payment of the alleged debt within ten (10) days.

HYDE & SWIGART
San Diego, California

58. This statement represented the threat to take an action that cannot legally be taken or that Defendant did not intend to take, and violated Cal. Civ. Code § 1788.17 because it violated 15 U.S.C. § 1692e(5).

59. This statement also represents a false, deceptive, or misleading means used in connection with the collection of the alleged debt. As such, Defendant violated Cal. Civ. Code §§ 1788.13(i) and 1788.13(j). Defendant further violated Cal. Civ. Code § 1788.17 because Defendant violated 15 U.S.C. §§ 1692e, 1692e(2)(B), and 1692e(10).

60. On or about November 13, 2007, Plaintiff contacted Defendant after receiving the threatening letters of November 5, 2007, and November 9, 2007.

61. After Plaintiff again disputed the debt, Defendant was very rude and abrasive. Defendant demanded Plaintiff to take a second mortgage on Plaintiff's house to pay the alleged debt. Defendant threatened to sue Plaintiff, "ruin [Plaintiff's] credit rating", and garnish Plaintiff's husband's wages, if Plaintiff did not make a payment by November 27, 2007.

62. This conversation left Plaintiff in a very emotionally upset state.

63. In this communication Defendant used language the natural consequence of which was to harass, oppress, or abuse Plaintiff, in violation of 15 U.S.C. § 1692d and Cal. Civ. Code § 1788.17.

64. The above communication by Defendant represented the threat to take an action that cannot legally be taken or that Defendant did not intend to take, and violated Cal. Civ. Code § 1788.17 because it violated 15 U.S.C. § 1692e(5).

65. The above communication by Defendant also represents a false, deceptive, or misleading means used in connection with the collection of the alleged debt. As such, Defendant violated Cal. Civ. Code §§ 1788.13(i) and 1788.13(j).

HYDE & SWIGART
San Diego, California

Defendant further violated Cal. Civ. Code § 1788.17 because Defendant violated 15 U.S.C. §§ 1692e, 1692e(2)(B), and 1692e(10).

66. On or about November 20, 2007, Plaintiff contacted Dr. Gertsch, owner of ASCS, regarding Plaintiff's alleged debt. Dr. Gertsch stated that he was upset that Plaintiff's insurance company had not made an adequate payment on Plaintiff's account, and that Dr. Gertsch would send Plaintiff appropriate form so that Plaintiff could appeal for further payment by insurance company.

67. Further, Dr. Gertsch promised to advise Defendant to extend Plaintiff's deadline for resolving the alleged debt issue to December 27, 2007.

68. On or about November 29, 2007, Plaintiff was informed that Plaintiff's credit report already contained negative entries regarding the above alleged debt.

69. On or about December 11, 2007, Plaintiff sent a letter to Defendant in which Plaintiff disputed the validity of the alleged debt in a manner consistent with the requirements in 15 U.S.C. § 1692g(b). Further, Plaintiff advised Defendant that Plaintiff wished Defendant to cease further communication with Plaintiff in a manner consistent with the requirements pursuant to 15 U.S.C. § 1692c(c).

70. On or about December 12, 2007, Defendant telephoned Plaintiff at her home. During the conversation, Defendant stated that Defendant has received Plaintiff's December 11, 2007 letter, and stated that Defendant cannot correct the credit damage because the debt has not been resolved. Defendant, again, demanded payment of the alleged debt.

71. By making the above communication after Defendant was notified in writing that Defendant was to cease further communication with the Plaintiff in a manner consistent with the requirements in 15 U.S.C. § 1692c(c), Defendant violated 15 U.S.C. § 1692c(c).

HYDE & SWIGART
San Diego, California

72. Because this communication did not comply with certain provision of the FDCPA, including, but not limited to, 15 U.S.C. § 1692c(c), this communication also violated Cal. Civ. Code § 1788.17.

73. By making the above communication, and Defendant's attempt to collect payment, before validating the debt after Plaintiff had disputed the validity of the debt, as required pursuant to 15 U.S.C. § 1692g(b), Defendant violated 15 U.S.C. § 1692g.

74. On or about January 28, 2008, Defendant contacted Plaintiff by telephone and left a message on the answering machine at Plaintiff's home in an attempt to collect on an alleged debt.

75. This January 28, 2008 communication merely stated a telephone number that was subsequently determined to be that of Defendant's business, along with and the name Diane Rios, and a demand that Plaintiff call that number.

76. Without exception, this January 28, 2008 communication did not provide Defendant's company name or that Defendant was a debt collector, thereby lacking meaningful disclosure of the caller's identity. As such, the communication violates 15 U.S.C. §§ 1692d(6), 1692e(11), and Cal. Civ. Code § 1788.11(b). Because this action violated 15 U.S.C. §§ 1692d(6) and 1692e(11), it also violates Cal. Civ. Code § 1788.17.

77. By making the above communication after Defendant was notified in writing that Defendant was to cease further communication with the Plaintiff in a manner consistent with the requirements in 15 U.S.C. § 1692c(c), Defendant violated 15 U.S.C. § 1692c(c).

78. Because this communication did not comply with certain provision of the FDCPA, including, but not limited to, 15 U.S.C. § 1692c(c), this communication also violated Cal. Civ. Code § 1788.17.

HYDE & SWIGART
San Diego, California

79. By making the above communication, and Defendant's attempt to collect payment, before validating the debt after Plaintiff had disputed the validity of the debt, as required pursuant to 15 U.S.C. § 1692g(b), Defendant violated 15 U.S.C. § 1692g.

80. On or about February 21, 2008, Defendant contacted Plaintiff by telephone and left a message on the answering machine at Plaintiff's home in an attempt to collect on an alleged debt.

81. This February 21, 2008 communication was in the form of a message placed on the answering machine at Plaintiff's home.

82. This February 21, 2008 communication merely stated a name, telephone number, and name of Defendant's business, and a demand that Plaintiff call that number.

83. Without exception, this February 21, 2008 communication did not provide that Defendant was a debt collector, thereby lacking meaningful disclosure of the caller's identity. As such, the communication violates 15 U.S.C. §§ 1692d(6), 1692e(11), and Cal. Civ. Code § 1788.11(b). Because this action violated 15 U.S.C. §§ 1692d(6) and 1692e(11), it also violates Cal. Civ. Code § 1788.17.

84. By making the above communication after Defendant was notified in writing that Defendant was to cease further communication with the Plaintiff in a manner consistent with the requirements in 15 U.S.C. § 1692c(c), Defendant violated 15 U.S.C. § 1692c(c).

85. Because this communication did not comply with certain provision of the FDCPA, including, but not limited to, 15 U.S.C. § 1692c(c), this communication also violated Cal. Civ. Code § 1788.17.

86. By making the above communication, and Defendant's attempt to collect payment, before validating the debt after Plaintiff had disputed the validity of

HYDE & SWIGART
San Diego, California

the debt, as required pursuant to 15 U.S.C. § 1692g(b), Defendant violated 15 U.S.C. § 1692g.

87. Subsequent to above communication, Plaintiff retained legal counsel concerning this alleged debt.

88. On or about February 22, 2008, Plaintiff's legal counsel advised Defendant that Plaintiff's legal counsel represented Plaintiff with regard to the alleged debt. In addition, Plaintiff's legal counsel supplied its firm full name and address to Defendant and requested that all further correspondence and communication in regard to Plaintiff's alleged debt should be forwarded to Plaintiff's legal counsel.

89. On or about March 13, 2008, Defendant contacted Plaintiff by telephone and left a message on the answering machine at Plaintiff's home in an attempt to collect on an alleged debt.

90. This March 13, 2008 communication was in the form of a message placed on the answering machine at Plaintiff's home.

91. This March 13, 2008 communication merely stated a name, telephone number, and name of Defendant's business, and a demand that Plaintiff call that number.

92. Without exception, this March 13, 2008 communication did not provide that Defendant was a debt collector, thereby lacking meaningful disclosure of the caller's identity. As such, the communication violates 15 U.S.C. §§ 1692d(6), 1692e(11), and Cal. Civ. Code § 1788.11(b). Because this action violated 15 U.S.C. §§ 1692d(6) and 1692e(11), it also violates Cal. Civ. Code § 1788.17.

93. By making the above communication after Defendant was notified in writing that Defendant was to cease further communication with the Plaintiff in a manner consistent with the requirements in 15 U.S.C. § 1692c(c), Defendant violated 15 U.S.C. § 1692c(c).

HYDE & SWIGART
San Diego, California

94. Because this communication did not comply with certain provision of the FDCPA, including, but not limited to, 15 U.S.C. § 1692c(c), this communication also violated Cal. Civ. Code § 1788.17.

95. By communicating with Plaintiff with regard to the alleged debt without the prior consent of Plaintiff given directly to Defendant or the express permission of a court of competent jurisdiction, when Defendant knew or should have known that Plaintiff was represented by an attorney and when Defendant had knowledge of or could have readily ascertained the name and address of the Plaintiff's attorney, Defendant violated 15 U.S.C. §§ 1692c(a)(2), 1692d, and 1692f.

96. By initiating communications, other than statements of account, with Plaintiff with regard to the alleged debt, when Defendant had been previously notified by Plaintiff's attorney that Plaintiff was represented by such attorney with respect to the alleged debt and such notice included the attorney's name and address and a request by such attorney that all communications regarding the consumer debt be addressed to such attorney, Defendant violated Cal. Civ. Code § 1788.14(c).

97. On or about March 25, 2008, Defendant contacted Plaintiff by telephone at Plaintiff's home in an attempt to collect on an alleged debt.

98. By making the above communication after Defendant was notified in writing that Defendant was to cease further communication with the Plaintiff in a manner consistent with the requirements in 15 U.S.C. § 1692c(c), Defendant violated 15 U.S.C. § 1692c(c).

99. Because this communication did not comply with certain provision of the FDCPA, including, but not limited to, 15 U.S.C. § 1692c(c), this communication also violated Cal. Civ. Code § 1788.17.

100. By communicating with Plaintiff with regard to the alleged debt without the prior consent of Plaintiff given directly to Defendant or the express permission of a court of competent jurisdiction, when Defendant knew or should have known that Plaintiff was represented by an attorney and when Defendant had knowledge of or could have readily ascertained the name and address of the Plaintiff's attorney, Defendant violated 15 U.S.C. §§ 1692c(a)(2), 1692d, and 1692f.

101. By initiating communications, other than statements of account, with Plaintiff with regard to the alleged debt, when Defendant had been previously notified by Plaintiff's attorney that Plaintiff was represented by such attorney with respect to the alleged debt and such notice included the attorney's name and address and a request by such attorney that all communications regarding the consumer debt be addressed to such attorney, Defendant violated Cal. Civ. Code § 1788.14(c).

102. On or about March 26, 2008, Defendant contacted Plaintiff by telephone and left a message on the answering machine at Plaintiff's home in an attempt to collect on an alleged debt.

103. This March 26, 2008 communication was in the form of a message placed on the answering machine at Plaintiff's home.

104. This March 26, 2008 communication merely stated a first name, telephone number, and a demand that Plaintiff call that number.

105. Without exception, this March 26, 2008 communication did not provide that Defendant was a debt collector, thereby lacking meaningful disclosure of the caller's identity. As such, the communication violates 15 U.S.C. §§ 1692d(6), 1692e(11), and Cal. Civ. Code § 1788.11(b). Because this action violated 15 U.S.C. §§ 1692d(6) and 1692e(11), it also violates Cal. Civ. Code § 1788.17.

106. By making the above communication after Defendant was notified in writing that Defendant was to cease further communication with the Plaintiff in a manner consistent with the requirements in 15 U.S.C. § 1692c(c), Defendant violated 15 U.S.C. § 1692c(c).

107. Because this communication did not comply with certain provision of the FDCPA, including, but not limited to, 15 U.S.C. § 1692c(c), this communication also violated Cal. Civ. Code § 1788.17.

108. By communicating with Plaintiff with regard to the alleged debt without the prior consent of Plaintiff given directly to Defendant or the express permission of a court of competent jurisdiction, when Defendant knew or should have known that Plaintiff was represented by an attorney and when Defendant had knowledge of or could have readily ascertained the name and address of the Plaintiff's attorney, Defendant violated 15 U.S.C. §§ 1692c(a)(2), 1692d, and 1692f.

109. On or about March 27, 2008, Defendant contacted Plaintiff by telephone and left a message on the answering machine at Plaintiff's home in an attempt to collect on an alleged debt.

110. This March 27, 2008 communication was in the form of a message placed on the answering machine at Plaintiff's home.

111. This March 27, 2008 communication merely stated a first name, and a telephone number, and a demand that Plaintiff call that number as soon as possible.

112. Without exception, this March 27, 2008 communication did not provide that Defendant was a debt collector, thereby lacking meaningful disclosure of the caller's identity. As such, the communication violates 15 U.S.C. §§ 1692d(6), 1692e(11), and Cal. Civ. Code § 1788.11(b). Because this action violated 15 U.S.C. §§ 1692d(6) and 1692e(11), it also violates Cal. Civ. Code § 1788.17.

HYDE & SWIGART
San Diego, California

113. By making the above communication after Defendant was notified in writing that Defendant was to cease further communication with the Plaintiff in a manner consistent with the requirements in 15 U.S.C. § 1692c(c), Defendant violated 15 U.S.C. § 1692c(c).

114. Because this communication did not comply with certain provision of the FDCPA, including, but not limited to, 15 U.S.C. § 1692c(c), this communication also violated Cal. Civ. Code § 1788.17.

115. By communicating with Plaintiff with regard to the alleged debt without the prior consent of Plaintiff given directly to Defendant or the express permission of a court of competent jurisdiction, when Defendant knew or should have known that Plaintiff was represented by an attorney and when Defendant had knowledge of or could have readily ascertained the name and address of the Plaintiff's attorney, Defendant violated 15 U.S.C. §§ 1692c(a)(2), 1692d, and 1692f.

116. By initiating communications, other than statements of account, with Plaintiff with regard to the alleged debt, when Defendant had been previously notified by Plaintiff's attorney that Plaintiff was represented by such attorney with respect to the alleged debt and such notice included the attorney's name and address and a request by such attorney that all communications regarding the consumer debt be addressed to such attorney, Defendant violated Cal. Civ. Code § 1788.14(c).

117. Subsequently, and even to this day, Defendant refuses to discontinue its communications with Plaintiff, all in violation of the above specifically cited statutes.

118. Because of these constant violations of the FDCPA and RFDCPA, Plaintiff has suffered injury in the form of an invasion of her individual privacy and her emotional well being.

HYDE & SWIGART
San Diego, California

Causes Of Action Claimed By Plaintiff

Count I

Violations Of The Fair Debt Collection Practices Act

15 U.S.C. § 1692 et seq.

119. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

120. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA, including but not limited to each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

121. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to $1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each Defendant.

Count II

Violation Of The Rosenthal Fair Debt Collection Practices Act

Cal. Civ. Code §§ 1788-1788.32 (RFDCPA)

122. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

123. The foregoing acts and omissions constitute numerous and multiple violations of the RFDCPA.

124. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or willful violation in the amount up to $1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for:

FAIR DEBT COLLECTION PRACTICES ACT

125. an award of statutory damages of $1,000.00, pursuant to 15 U.S.C. § 1692k(a)(2)(A);
126. an award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3).

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT

127. an award of statutory damages of $1,000.00, pursuant to Cal. Civ. Code § 1788.30(b);
128. an award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

TRIAL BY JURY

129. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: 4/17/08

Respectfully submitted,
HYDE & SWIGART

By: [signature]
Robert L. Hyde, Esq.
Attorney for Plaintiff

HYDE & SWIGART
San Diego, California

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

FILED
APR 21 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

I (a) PLAINTIFFS

Erica Welker

DEFENDANTS

California Accounts Service;

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Robert L. Hyde, Esq. SBN: 227183
411 Camino Del Rio South, Ste. 301
San Diego, CA 92108
Tel: 619-233-7770

ATTORNEYS (IF KNOWN)

Unknown

'08 CV 0723 JLS CAB

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX (For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT

	PT	DEF		PT	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. and the Rosenthal Fair Debt Collection Practices Act, Cal Civ Code 1788-1788.32 (RFDCPA)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment &Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153Recovery of Overpayment of Veterans Benefits
- ☐ 160 Stockholders Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury- Medical Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC881
- ☐ 630 Liquor Laws
- ☐ 640 RR & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (13958)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reappointment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities Exchange
- ☐ 875 Customer Challenge 12 USC
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State
- ☒ 890 Other Statutory Actions

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Tort to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence Habeas Corpus
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prisoner Conditions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appelate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 **DEMAND** $ 76000

Check YES only if demanded in complaint: **JURY DEMAND:** ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE 04/18/2008 4/18/08 SIGNATURE OF ATTORNEY OF RECORD

150027 NS 4/22
$350

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 150027 - MS

April 22, 2008
09:47:37

Civ Fil Non-Pris
USAO #.: 08-CV-0723-JLS
Judge..: JANIS L. SAMMARTINO
Amount.: $350.00 CK
Check#.: BC2370

Total-> $350.00

FROM: ERICA WELKER
VS. CA ACCOUNTS SERVICE